



EUROPEAN COMMISSION

*Brussels, 25.9.2017
C(2017) 6124 final*

*Ms Laura BOLDRINI
President of the
Camera dei Deputati
Piazza Montecitorio
IT – 00100 ROME*

Dear President,

The Commission would like to thank the Camera dei Deputati for its Opinion on the proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications {COM(2017) 10 final}.

The proposal was adopted in January 2017, after the review of the Directive on privacy and electronic communications, which had been announced in the Digital Single Market Strategy¹, and the political agreement on the General Data Protection Regulation².

The Commission is confident that the proposal will enhance the privacy protection of end-users, increase trust in digital services and allow businesses to fully participate in, and profit from, the Digital Single Market.

The Commission welcomes the Camera dei Deputati's positive assessment of the proposal. The Commission has taken good note of the comments of the Camera dei Deputati.

In response to the specific comments in the Opinion, the Commission would like to refer the Camera dei Deputati to the attached annex.

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Digital Single Market Strategy for Europe, COM(2015) 192 final.

² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1–88).

The points made in the annex are based on the initial proposal presented by the Commission, which is currently in the legislative process involving the European Parliament and the Council.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Camera dei Deputati and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Mariya Gabriel
Member of the Commission*

Annex

The Commission has carefully considered the comments raised by the Camera dei Deputati in its Opinion and would like to offer the following observations grouped by topic.

1. Uniform framework for metadata and content data (Articles 5-7 of the proposal)

The Camera dei Deputati considers that the proposal should strengthen the confidentiality of electronic communications by providing for a uniform legal framework for content and metadata, for example by setting a ban on third party access to both communications metadata and content.

Article 5 of the proposal lays down the general principle of confidentiality of electronic communications data, which includes both metadata and content data. Deviations from this principle are only possible for permitted uses of electronic communications data, metadata or content data, as provided in Article 6 of the proposal.

The Commission would like to stress that to process metadata and content data, in both cases the legal grounds are based on consent of the concerned end-users. The only difference relates to the need to consult a data protection authority. In accordance with Article 36 of the General Data Protection Regulation, the controller has to consult the data protection authority prior to the processing where a data protection impact assessment indicates that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk. As communications content concerns the essence of the right to the protection of communications, the processing of communications content is assumed to result in a high risk and therefore consultation of the data protection authority is always needed in the case of such processing.

However, the Commission would like to highlight that in case the processing of metadata is likely to result in a high risk to the rights and freedoms of natural persons, a data protection impact assessment needs to be carried out in accordance with Articles 35 and 36 of the General Data Protection Regulation, as explained in recital 17 of the proposal.

The Commission believes that the proposal provides for a high level of protection for end-users, and strikes the right balance between the confidentiality of electronic communications and the legitimate uses of metadata and content data.

2. Collection of data emitted by the device (Article 8.2 of the proposal)

The Camera dei Deputati is of the opinion that the collection of data emitted by the device should be subject to end-user's explicit consent.

The Commission believes that displaying a prominent notice is sufficient for the reasons explained below. Article 8.2 of the Proposal is meant to cover a specific situation: counting individuals, without the collection of any other information, as explained in recital 25. For other more intrusive purposes, including merging the collected data with personal data, displaying a prominent notice may not be sufficient and a legal ground for processing under the General Data Protection Regulation may be needed. Due attention

will be paid during the legislative process to ensure adequate privacy protection and legal certainty on this point.

3. *Privacy settings in software permitting electronic communications (Article 10 of the proposal)*

The proposal imposes an obligation on providers of software permitting electronic communications to help users make effective choices about privacy settings. The Camera dei Deputati considers that such settings should offer a granular choice to users, and the revision of the settings should be possible in an easy manner at a later stage.

The Commission recalls that the proposal introduces a new twofold obligation: a) to offer the user, via privacy settings, the choice of preventing anyone other than the user from storing information in the device, and b) to present such settings to users when they install software, making sure that the installation is finalised only after the choice is made. In addition, recital 24 of the proposal encourages software manufacturers to provide easy ways to change the settings at any time, and to allow users to make exceptions for or to whitelist certain websites or to specify for which websites third party cookies are always or never allowed. Therefore, the proposal promotes granular options in privacy settings that can be easily reviewed at any time.

4. *Alignment of sanctions with the General Data Protection Regulation sanctions (Articles 23 and 24 of the proposal)*

The Camera dei Deputati considers that the system of sanctions for infringements of the proposed Regulation should be aligned with the corresponding system established by the General Data Protection Regulation.

The Commission recalls that Article 23 of the proposal introduces a two-tiered system of administrative fines, which is aligned with the system provided by Article 83 of the General Data Protection Regulation. In addition, similarly to Article 84 of the General Data Protection Regulation, Article 24 of the proposal requires Member States to lay down the rules on penalties, in particular for infringements which are not subject to administrative fines.

5. *Cooperation between data protection authorities and national regulatory authorities (Article 18.2 of the proposal)*

The Camera dei Deputati concludes its Opinion that further consideration regarding Article 18.2 is necessary in order to define the cooperation of data protection authorities with national regulatory authorities established pursuant to the Directive Establishing the European Electronic Communications Code in more detail.

The Commission takes into account this remark and will duly consider it during the ongoing legislative process.
